

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOANNA FAN,

Petitioner,

-against-

UNITED STATES,

Defendant.
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SUMMARY ORDER
15-CV-4169 (DLI)

DORA L. IRIZARRY, Chief United States District Judge:

On September 23, 2016, Petitioner Joanna Fan (“Petitioner” or “Fan”) filed a motion for bail pending the resolution of this action. *See* Pet.’s Emerg. Mot. for Bail & Inc. Mem. of Law, Dkt. Entry No. 31. The Court denied this motion for the reasons stated on the record at the October 21, 2016 appearance. *See* Oct. 21, 2016 Min. Entry. On December 14, 2016, Petitioner filed a motion for reconsideration, asking this Court to revisit and reverse its October 21, 2016 ruling. *See* Pet.’s Dec. 13, 2016 Ltr., Dkt. Entry No. 42. The Court denied this motion by Summary Order. *See* Am. Order, Dkt. Entry No. 47.¹

Presently before the Court is Fan’s request for a certificate of appealability as to the denial of her motion for reconsideration, “or a statement of reasons why such should not issue.” Ltr. Mot. for Cert. of App., Dkt. Entry No. 48 (internal citations omitted). The Government opposed the request. *See* Resp. in Opp., Dkt. Entry No. 50. For the following reasons, Fan’s request for a certificate of appealability is denied.

¹ The initial Summary Order was filed on March 20, 2017. *See* Order, Dkt. Entry No. 46. The Amended Summary Order was filed on March 27, 2017. *See* Am. Order.

DISCUSSION

“In a *habeas corpus* proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.” 28 U.S.C. § 2253(a). In order to appeal such an order, a petitioner must secure a certificate of appealability. 28 U.S.C. § 2253(c). While the decision to deny bail pending the resolution of a *habeas* petition “is collateral to the merits,” the United States Court of Appeals for the Second Circuit has recognized that such a decision is “essentially unreviewable after a final order on the merits.” *Grune v. Coughlin*, 913 F.2d 41, 44 (2d Cir. 1990). Accordingly, although the statute only references “final” orders, the Second Circuit has determined that the requirements of section 2253 extend to an “order denying bail.” *Id.* (citing *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990)).

In order to secure a certificate of appealability, a petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This standard requires a petitioner to make a “showing that reasonable jurists could debate whether (or, for that matter, agree that) the [request] should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 894 n.4 (1983)). There is no such showing here.

“The standard for granting [a motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (internal citations omitted); *see also United States v. Persico*, No. 10-CR-147 (SLT), 2015 WL 893542, at

*8 (E.D.N.Y. Mar. 2, 2015). As discussed in the Amended Summary Order, Fan’s motion for reconsideration fell short of this standard; the subject motion was premised on inconsequential arguments (*i.e.*, an alleged miscalculation in loss that would not remove her sentence from either the advisory sentencing guideline range contained in the United States Sentencing Guidelines (“U.S.S.G.”) referenced at her sentencing or its current incarnation), and conjecture (*i.e.*, how the Court would sentence her under the current version of the U.S.S.G. or the impact of proposed amendments to the guidelines that Congress has not yet acted upon). *See* Am. Order. Given the failure of Fan’s motion for reconsideration to make even a rudimentary showing as to why the Court should reconsider its decision to deny bail pending the resolution of the Petition, the request for a certificate of appealability is denied.

CONCLUSION

For the reasons set forth above, the motion for a certificate of appealability as to the Court’s decision regarding her motion for reconsideration is denied.

SO ORDERED.

Dated: Brooklyn, New York
May 25, 2017

/s/
DORA L. IRIZARRY
Chief Judge